DEC 4 2000

Supreme Court, U.S.
FILED
DEC 4 2000
CLERK

No. 99-2035

In The

Supreme Court of the United States

COOPER INDUSTRIES, INC.,

Petitioner,

vs.

LEATHERMAN TOOL GROUP, INC.,

Respondent.

On Writ Of Certiorari
To The United States Court Of Appeals
For The Ninth Circuit

BRIEF OF GENERAL DYNAMICS CORPORATION AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

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INTEREST OF *AMICUS CURIAE*[1]

General Dynamics Corporation is a leading supplier of sophisticated defense systems to the United States and its allies. It is headquartered in Falls Church, Virginia, and employs approximately 44,000 people.

Amicus has experienced the harmful effects of punitive damages awards imposed without meaningful judicial review. *Amicus* is particularly concerned about the problem exemplified by the present case, in which a multi-million dollar punitive award was affirmed on appeal without proper consideration of the due process protections this Court established in *BMW of North America, Inc. v. Gore*, 517 U.S. 559 (1996).

SUMMARY OF ARGUMENT

Petitioner's brief explains why appellate courts should apply the de novo standard of review when the constitutionality of a punitive damage award is challenged under *BMW*. The purpose of this brief is to demonstrate the need for some additional guidance on how that standard of review should be applied. "Standards of review necessarily intertwine with the merits of the actions they act upon; the stated tests often have meaning

[1] This brief was authored by the *amicus* and counsel listed on the front cover, and was not authored in whole or in part by counsel for a party. No one other than the *amicus* or its counsel made any monetary contributions to the preparation or submission of this brief.

only in their particular contexts despite sounding so similar." Steven Alan Childress & Martha S. Davis, Federal Standards of Review x (3d ed. 1999).

The Appendix to this brief compiles information about federal and state appellate cases in which (1) a defendant has challenged the constitutionality of a punitive damage award under *BMW*, and (2) the challenged award was $1 million or more. Review of the Appendix demonstrates that the vast majority of appellate courts are giving little or no weight to *BMW*'s third guidepost: comparison of the punitive award to statutory civil and criminal penalties for comparable misconduct. This Court explained in *BMW* that reviewing courts should accord "substantial deference" to statutory penalties because they constitute legislative determinations of the appropriate sanctions for misconduct. Only a minority of appellate courts are doing so. We urge this Court to emphasize the importance of de novo review of all three of the *BMW* guideposts, including the third.

Our study of the federal and state appellate cases also reveals that many courts are intermingling the *BMW* guideposts with state law factors, such as the defendant's wealth, that have little or nothing to do with the constitutional issue of fair notice. This reflects confusion of the federal constitutional issue with state law issues. We urge this Court to emphasize the importance of de novo review of the correct issue: fair notice.

STATEMENT OF THE CASE

Amicus hereby adopts and incorporates by reference the Statement of the Case set forth in Petitioner's Brief.

ARGUMENT

I.

THE VAST MAJORITY OF APPELLATE COURTS HAVE IGNORED OR MISAPPLIED *BMW*'S THIRD GUIDEPOST: COMPARISON OF THE PUNITIVE DAMAGE AWARD TO CIVIL AND CRIMINAL PENALTIES FOR COMPARABLE MISCONDUCT.

In *BMW of North America v. Gore, Inc.*, 517 U.S. 559, 574 (1996), this Court held that a state violated the Due Process Clause of the Fourteenth Amendment by imposing punitive damages without "fair notice not only of the conduct that will subject [the defendant] to punishment, but also of the severity of the penalty that [the] State may impose." This Court considered three "guideposts" in determining whether BMW had fair notice of the $2 million punitive damage award the Alabama courts had imposed in that case: (1) the degree of reprehensibility of the defendant's conduct; (2) the ratio of the punitive damage award to the actual harm inflicted on the plaintiff; and (3) comparison of civil and criminal penalties for comparable misconduct. *See id.* at 574-83.

Explaining the rationale behind the third guidepost, this Court stated that appellate courts should " 'accord "substantial deference" to legislative judgments concerning appropriate sanctions for the conduct at issue.' " *Id.* at 583. The inclusion of the third guidepost appears to be one of the most significant aspects of the *BMW* opinion. *See* Paul M. Sykes, Note, *Marking a Road to Nowhere? Supreme Court Sets Punitive Damages Guideposts in* BMW v. Gore, 75 N.C. L. Rev. 1084, 1112 (1997) (stating that the third guidepost, unlike the others, "adds a new tool to the toolchests of lower courts"); Sandra Wilhide, Note, BMW v. Gore: *Curbing Excessive Punitive Damages*, 19 U. Haw. L. Rev. 311, 337 n.207 (1997) (observing that statutory penalties were not traditionally considered before *BMW*: "Until now such comparisons have been rejected").

Unfortunately, since *BMW*, most appellate courts have not accorded substantial deference, or any deference for that matter, to legislative judgments concerning the appropriate sanctions for misconduct.

The Appendix to this brief lists the federal and state appellate cases involving challenges to the constitutionality under *BMW* of a punitive damage award of $1 million or more.[2] As the Appendix reveals, 38 percent of these cases (23 out of 61) did not even state whether legislatively established penalties existed for comparable misconduct, let alone accord these penalties substantial deference. Another 26 percent (16 out of 61) stated whether statutory penalties existed, but nevertheless

[2] Cases involving less than $1 million have not been included simply to keep the Appendix manageable.

chose to ignore them for a variety of reasons discussed below.

Many appellate courts, like the Ninth Circuit in the case at bar, have upheld seven figure punitive awards against constitutional attack under *BMW* without even mentioning the third guidepost. *See, e.g., Morse v. S. Union Co.*, 174 F.3d 917, 926 (CA8 1999); *Denesha v. Farmers Ins. Exch.*, 161 F.3d 491, 504-05 (CA8 1998); *EEOC v. HBE Corp.*, 135 F.3d 543, 556-57 (CA8 1998); *Smith v. Ingersoll-Rand Co.*, 214 F.3d 1235, 1253-54 (CA10 2000); *Klein v. Grynberg*, 1997 WL 643899, at *1 (CA10 1997) (unreported); *Prudential Ballard Realty Co., Inc. v. Weatherly*, ___ So.2d ___ [2000 WL 1038167, at *5] (Ala. 2000); *Notrica v. State Comp. Ins. Fund*, 83 Cal. Rptr. 2d 89, 114, 116-18 (Ct. App. 1999); *Owens-Corning Fiberglas Corp. v. Rivera*, 683 So.2d 154, 156 (Fla. Dist. Ct. App. 1996); *Bibb Distrib. Co. v. Stewart*, 519 S.E.2d 455, 459 (Ga. Ct. App. 1999); *Wilson v. IBP, Inc.*, 558 N.W.2d 132, 147-48 (Iowa 1996); *State Farm Mut. Auto. Ins. Co. v. Grimes*, 722 So.2d 637, 646-47 (Miss. 1998); *Evans v. Dean Witter Reynolds, Inc.*, 5 P.3d 1043, 1053 & n.16 (Nev. 2000); *Lakin v. Senco Prods., Inc.*, 987 P.2d 463, 476 (Or. 1999).[3]

[3] Although we have limited the Appendix to cases involving punitive awards of $1 million or more, the problem discussed in this section is not limited to cases with large awards. Many appellate courts have affirmed awards under $1 million without discussing statutory penalties. *See, e.g., Material Supply Int'l, Inc. v. Sunmatch Indus. Co.*, 146 F.3d 983, 993-94 (CADC 1998) (upholding $100,000 award without discussing statutory penalties); *Routh Wrecker Serv., Inc. v. Washington*, 980 S.W.2d 240, 244-45 (Ark. 1998) (upholding $75,000 award without discussing statutory penalties); *Southeastern Sec. Ins. Co. v. Hotle*, 473 S.E.2d 256, 259, 261 (Ga. Ct. App. 1996) (upholding

In a number of cases, the Alabama Supreme Court has identified statutory penalties for comparable misconduct, but instead of according substantial deference to legislative judgment, has ignored the statutory penalties because they were perceived to be too low, *see, e.g., Union Sec. Life Ins. Co. v. Crocker*, 709 So.2d 1118, 1122 (Ala. 1997); *Ford Motor Co. v. Sperau*, 708 So.2d 111, 122 (Ala. 1997); *Life Ins. Co. of Ga. v. Johnson*, 701 So.2d 524, 531 (Ala. 1997); *BMW of N. Am., Inc. v. Gore*, 701 So.2d 507, 514 (Ala. 1997), or because statutory penalties were not sought or assessed against the defendant, *see Lance, Inc. v. Ramanauskas*, 731 So.2d 1204, 1219 (Ala. 1999); *see also Grynberg v. Citation Oil & Gas Corp.*, 573 N.W.2d 493, 507 (S.D. 1997).

Some courts, instead of looking at comparable statutory penalties, have looked only at verdicts or judgments in similar cases. *See, e.g., Gregory v. Shelby County, Tenn.*, 220 F.3d 433, 445 (CA6 2000) ("Finally, the third factor provides little guidance in this determination as the parties have provided no evidence of similar jury verdicts on this issue."); *Harris v. Soley*, 756 A.2d 499, 509 (Me. 2000) ("We next review the difference between the award in this case and civil penalties authorized or awarded in other cases."); *Letz v. Turbomeca Engine Corp.*, 975 S.W.2d

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$65,000 award without discussing statutory penalties); *Condon Auto Sales & Serv., Inc. v. Crick*, 604 N.W.2d 587, 594-95 (Iowa 1999) (upholding $30,000 award without considering statutory penalties); *Garcia v. Coffman*, 946 P.2d 216, 224-25 (N.M. Ct. App. 1997) (upholding $50,000 award without discussing statutory penalties); *Bardonaro v. Gen. Motors Corp.*, 2000 WL 1062188, at *5-*6 (Ohio Ct. App. 2000) (unreported) (upholding $100,000 award without discussing statutory penalties).

155, 177-79 (Mo. Ct. App. 1997) (acknowledging third guidepost but discussing only cases, not statutory penalties). *BMW* approved the consideration of judicial decisions, *see BMW*, 517 U.S. at 584, but not to the exclusion of statutory penalties. Otherwise, judicial decisions upholding excessive punitive damage awards can be used to justify one another.

Where there are no statutory penalties for comparable misconduct, some appellate courts have simply declared the third guidepost inapplicable, *see, e.g., Ford Motor Co. v. Ammerman*, 705 N.E.2d 539, 562-63 (Ind. Ct. App. 1999) ("In this case however there is no comparable civil statutory penalty. . . . The same is true for criminal penalties. Thus this portion of the *Gore* indicia of excessiveness is not applicable."); *Paracelsus Health Care Corp. v. Willard*, 754 So.2d 437, 445 (Miss. 1999) (disposing of third guidepost by stating "there are no other sanctions which would be imposed under the facts of this case"), rather than concluding that the absence of statutory penalties suggests the absence of fair notice.

In sum, it is apparent that the vast majority of appellate courts have ignored the third guidepost or given it short shrift. *Amicus* respectfully requests that this Court not only adopt the de novo standard of review, but emphasize that appellate courts must independently consider and analyze each of *BMW*'s three guideposts, including comparing the punitive award to statutory civil and criminal penalties for comparable misconduct.

II.

MANY APPELLATE COURTS HAVE DILUTED THE *BMW* GUIDEPOSTS BY INTERMINGLING STATE LAW FACTORS BEARING LITTLE OR NO RELATION TO FAIR NOTICE.

Many appellate courts, when faced with a challenge to the amount of a punitive damage award under *BMW*, have reviewed the award by combining the *BMW* guideposts with the factors considered when reviewing punitive damage awards under state law. *See, e.g., Morse v. S. Union Co.*, 174 F.3d 917, 926 (CA8 1999) (combining *BMW* guideposts with factors considered under Missouri law); *Lance, Inc. v. Ramanauskas*, 731 So.2d 1204, 1218-21 (Ala. 1999) (combining *BMW* guideposts with factors considered under Alabama law); *Notrica v. State Comp. Ins. Fund*, 83 Cal. Rptr. 2d 89, 114, 116-18 (Ct. App. 1999) (combining *BMW* guideposts with factors considered under California law); *Ford Motor Co. v. Ammerman*, 705 N.E.2d 539, 561-64 (Ind. Ct. App. 1999) (combining *BMW* guideposts with factors considered under Indiana law); *Wilson v. IBP, Inc.*, 558 N.W.2d 132, 147-48 (Iowa 1996) (combining *BMW* guideposts with factors considered under Iowa law); *Bowden v. Caldor, Inc.*, 710 A.2d 267, 277-86 (Md. 1998) (combining *BMW* guideposts with factors considered under Maryland law); *Paracelsus Health Care Corp. v. Willard*, 754 So.2d 437, 444-45 (Miss. 1999) (combining *BMW* guideposts with factors considered under Mississippi law); *Letz v. Turbomeca Engine Corp.*, 975 S.W.2d 155, 177-80 (Mo. Ct. App. 1997) (combining *BMW* guideposts with factors considered under Missouri law); *Lakin v. Senco Prods., Inc.*, 987 P.2d 463, 476 (Or. 1999) (disposing of due process argument and state law excessiveness

argument in a single paragraph, citing only Oregon law); *Grynberg v. Citation Oil & Gas Corp.*, 573 N.W.2d 493, 504-08 (S.D. 1997) (combining *BMW* guideposts with factors considered under South Dakota law); *Vandevender v. Sheetz, Inc.*, 490 S.E.2d 678, 692 (W. Va. 1997) (combining *BMW* guideposts with factors considered under West Virginia law).[4]

Intermingling state law factors with the *BMW* guideposts is improper analysis. This Court made clear in *BMW* that the three guideposts are designed to help a reviewing court determine the maximum amount of punitive damages a state can impose without denying a defendant's right to due process. *See Johansen v. Combustion Eng'g, Inc.*, 170 F.3d 1320, 1334 (CA11 1999) ("*BMW* makes clear that there is a constitutional limit on a punitive damage award beyond which neither the jury nor the court has any discretion to venture.").

In contrast, state law tests for excessiveness are generally aimed at determining whether a punitive damage award is the result of passion and prejudice. *See, e.g., Lance, Inc.*, 731 So.2d at 1216; *Notrica*, 83 Cal. Rptr. 2d at 116; *Ford Motor Co. v. Ammerman*, 705 N.E.2d at 563; *Wilson*, 558 N.W.2d at 147; *Paracelsus Health Care Corp.*, 754 So.2d at 444; *Allsup's Convenience Stores, Inc. v. N.*

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[4] This intermingling helps explain why some appellate courts have applied the abuse-of-discretion standard of review. They have mixed the *BMW* test with state law, then cited a case or statute that provides for a deferential standard of review as a matter of state law. *See, e.g., Morse*, 174 F.3d at 925; *Wilson*, 558 N.W.2d at 147-48; *Barnett v. La Societe Anonyme Turbomeca Fr.*, 963 S.W.2d 639, 661 (Mo. Ct. App. 1997).

River Ins. Co., 976 P.2d 1, 9 (N.M. 1998); *Williams v. Aetna Fin. Co.*, 700 N.E.2d 859, 871 (Ohio 1998); *Grynberg*, 573 N.W.2d at 504.

Put simply, *BMW* asks whether a defendant had fair notice, while state law typically asks whether a reasonable jury could have imposed the amount in question. While the tests share some common elements, the ultimate determinations they seek to make are different.

For example, some courts that have intermingled state law factors with *BMW*'s guideposts have cited the defendant's ability to pay as a basis for upholding a punitive damage award. *See, e.g., Wilson*, 558 N.W.2d at 147-48; *Paracelsus Health Care Corp.*, 754 So.2d at 445; *Vandevender*, 490 S.E.2d at 692. Although many states provide that the defendant's wealth has a place in assessing the amount of punitive damages in the first instance, or in reviewing a punitive award for excessiveness, this Court made clear in *BMW* that a defendant's wealth has no bearing on whether a punitive award violates due process because the defendant lacked fair notice: "The fact that BMW is a large corporation rather than an impecunious individual does not diminish its entitlement to fair notice of the demands that the several States impose on the conduct of its business." *BMW*, 517 U.S. at 585.

Amicus respectfully requests that this Court not only adopt the de novo standard of review, but emphasize that appellate courts must apply that standard to the correct issue: fair notice. State law factors having little or nothing to do with fair notice should not be fused with *BMW*'s guideposts.

CONCLUSION

For the foregoing reasons, *amicus* urges that the decision of the Ninth Circuit Court of Appeals be reversed.

Respectfully submitted,

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APPENDIX

Cases Challenging the Constitutionality Under *BMW* of a Punitive Award of $1 Million or More

Punitive Damages		**Ratio**	**Nature of Conduct**	**Comparable Statutory Penalties**	**Final Punitives**	**Final Ratio**
Verdict(s)	**After Tr. Court's Review**					
3d Circuit *Inter Med. Supplies, Ltd. v. EBI Med. Sys., Inc.*, 181 F.3d 446 (CA3 1999)						
$100.6 M	$50 M	1.04	Unfair competition	$500,000 or $1.5 M; disregarded as unhelpful	$1 M	0.02
6th Circuit *Gregory v. Shelby County, Tenn.*, 220 F.3d 433 (CA6 2000)						
$2.2 M	Not known[1]	Not known	Civil rights violation (death)	Not discussed	$2.2 M	2.83

[1]Reduced, but amount of reduction not revealed by appellate opinion.

Punitive Damages		Ratio	Nature of Conduct	Comparable Statutory Penalties	Final Punitives	Final Ratio
Verdict(s)	**After Tr. Court's Review**					
8th Circuit						
Morse v. S. Union Co., 174 F.3d 917 (CA8 1999)						
$6.25 M	$400,000	5.71	Employment discrimination	Not discussed	$400,000	5.71
Watkins v. Lundell, 169 F.3d 540 (CA8 1999)						
$3.5 M $117,500	Same	14.89 .50	Fraudulent inducement of contract	$10,000	$940,000 None	4 N/A
Denesha v. Farmers Ins. Exch., 161 F.3d 491 (CA8 1998)						
$4 M	None	N/A	Employment discrimination	Not discussed	$700,000	4.26
EEOC v. HBE Corp., 135 F.3d 543 (CA8 1998)						
$4.8 M (2 plaintiffs)	Same	42.61	Employment discrimination	Not discussed	$480,000	4.26

Punitive Damages		Ratio	Nature of Conduct	Comparable Statutory Penalties	Final Punitives	Final Ratio
Verdict(s)	**After Tr. Court's Review**					
Kim v. Nash Finch Co., 123 F.3d 1046 (CA8 1997)						
$7 M	Not known"	Not known	Employment discrimination	$300,000	$300,000	Not known
Kimzey v. Wal-Mart Stores, Inc., 107 F.3d 568 (CA8 1997)						
$50 M	$5 M	142.86	Sexual harassment	$300,000 (fed); disregarded as inapplicable to state law claim	$350,000	10

"The district court capped the judgment at $300,000, without allocating between compensatory and punitive damages.

Punitive Damages		Ratio	Nature of Conduct	Comparable Statutory Penalties	Final Punitives	Final Ratio
Verdict(s)	After Tr. Court's Review					
9th Circuit *Ace v. Aetna Life Ins. Co.*, 139 F.3d 1241 (CA9 1998)						
$16.5 M	None	N/A	Insurance bad faith	$500,000	Vacated & remanded for recon-sideration	N/A
VisionQuest Nat'l, Ltd. v. Marimed Found., 1998 WL 416471 (CA9 1998) (unreported)						
$1.75 M	Same	3.19	Tortious breach of contract	Not discussed	$1.75 M	3.19
Guzman v. Tower Dev., Inc., 1997 WL 801449 (CA9 1997) (unreported)						
$4 M (2 plaintiffs)	Same	17.19	Fraud, conversion	Disregarded because no penalties found	$4 M	17.19

Punitive Damages		Ratio	Nature of Conduct	Comparable Statutory Penalties	Final Punitives	Final Ratio
Verdict(s)	After Tr. Court's Review					
10th Circuit *Bielicki v. Terminix Int'l Co.*, 225 F.3d 1159 (CA 10 2000)						
$2.04 M	Same	12	Negligence	$30,000 and one year in prison (fed); $1,000 and revocation of license (state)	$2.04 M	12
Smith v. Ingersoll-Rand Co., 214 F.3d 1235 (CA10 2000)						
$17.46 M	Same	1.78	Products liability (amputation)	Not discussed	$17.46 M	1.78
United Int'l Holdings, Inc. v. The Wharf (Holdings) Ltd., 210 F.3d 1207 (CA10 2000)						
$58.5 M	Same	0.87	Securities fraud	$2,500,000 (fed) and $750,000 (state)	$58.5 M	0.87

Punitive Damages		Ratio	Nature of Conduct	Comparable Statutory Penalties	Final Punitives	Final Ratio
Verdict(s)	**After Tr. Court's Review**					
Deters v. Equifax Credit Info. Servs., Inc., 202 F.3d 1262 (CA10 2000)						
$1 M	$295,000	59	Sexual harassment	$300,000	$295,000	59
FDIC v. Hamilton, 122 F.3d 854 (CA10 1997)						
$1.2 M	Same	27.27	Fraud	None; treated as mitigating factor	$264,000	6
Klein v. Grynberg, 1997 WL 643899 (CA10 1997) (unreported)						
$4 M (3 plaintiffs)	$600,000	150,000	Breach of fiduciary duty	Not discussed	$600,000	150,000
Cont'l Trend Res., Inc. v. OXY USA Inc., 101 F.3d 634 (CA10 1996)						
$30 M	Same	111.52	Interference with contract	"Very large"	$6 M	22.30

Punitive Damages		Ratio	Nature of Conduct	Comparable Statutory Penalties	Final Punitives	Final Ratio
Verdict(s)	**After Tr. Court's Review**					
11th Circuit *Johansen v. Combustion Eng'g, Inc.*, 170 F.3d 1320 (CA11 1999)						
$45 M (15 plaintiffs)	$4.35 M	100	Pollution	$10,000	$4.35 M	100
Alabama *Prudential Ballard Realty Co., Inc. v. Weatherly*, ___ So.2d ___ [2000 WL 1038167] (Ala. 2000)						
$2.5 M	$1.25 M	5	Real estate fraud	Not discussed	$750,000	3
Lance, Inc. v. Ramanauskas, 731 So.2d 1204 (Ala. 1999)						
$13 M	Same	N/A [!!!]	Wrongful death	Disregarded because fines not sought or imposed	$4 M	N/A

[!!!]No compensatory damages allowed under state law.

Punitive Damages		Ratio	Nature of Conduct	Comparable Statutory Penalties	Final Punitives	Final Ratio
Verdict(s)	**After Tr. Court's Review**					
McKowan v. Bentley, 1999 WL 667290 (Ala. 1999) (unreported)						
$2 M	Same	N/A [1]	Wrongful death	Disregarded because no penalties found	$2 M	N/A
Union Sec. Life Ins. Co. v. Crocker, 709 So.2d 1118 (Ala. 1997)						
$2 M	Same	123.28	Fraud	$2,000; disregarded because too low	$1 M	61.64
Ford Motor Co. v. Sperau, 708 So.2d 111 (Ala. 1997)						
$6 M (2 plaintiffs)	Same	3.55	Fraud	$2,000; disregarded because too low	$1.792 M	1.06

[1]No compensatory damages allowed under state law

Punitive Damages		Ratio	Nature of Conduct	Comparable Statutory Penalties	Final Punitives	Final Ratio
Verdict(s)	**After Tr. Court's Review**					
BMW of N. Am., Inc. v. Gore, 701 So.2d 507 (Ala. 1997)						
$4 M	$2 M (after first appeal)	500	Fraud	$2,000; disregarded because too low	$50,000	12.5
Foremost Ins. Co. v. Parham, 693 So.2d 409 (Ala. 1997)						
$4.5 M $3 M $4.5 M $3 M	$2.5 M $750,000 $2.5 M $750,000	10,647 459.14 10,950 624.52	Fraud	$1,000	$114,500 $60,500 $112,500 $60,500	487.65 37.03 492.34 50.37
Arkansas *Edwards v. Stills*, 984 S.W.2d 366 (Ark. 1998)						
$1.5 M	Same	6.16	Assault, battery, false imprisonment	Life in prison	$1.5 M	6.16

Punitive Damages		Ratio	Nature of Conduct	Comparable Statutory Penalties	Final Punitives	Final Ratio
Verdict(s)	**After Tr. Court's Review**					
California *Notrica v. State Comp. Ins. Fund*, 83 Cal. Rptr. 2d 89 (Ct. App. 1999)						
$20 M	Same	41.79	Insurance bad faith	Not discussed	$5 M	10.45
Florida *Langmead v. Admiral Cruises, Inc.*, 696 So.2d 1189 (Fla. Dist. Ct. App. 1997)						
$3.5 M	Same	3626.94	Personal injury (minor injury to eye)	None; treated as mitigating factor	None	N/A
Owens-Corning Fiberglas Corp. v. Rivera, 683 So.2d 154 (Fla. Dist. Ct. App. 1996)						
$1.5 M	Same	0.42	Products liability (asbestosis)	Not discussed	$1.5 M	0.42

Punitive Damages		Ratio	Nature of Conduct	Comparable Statutory Penalties	Final Punitives	Final Ratio
Verdict(s)	**After Tr. Court's Review**					
Mich. Mut. Ins. Co. v. Sports, Inc., 698 N.E.2d 834 (Ind. Ct. App. 1999)						
$1 M	Same	12.81	Insurance bad faith	$200,000	$1 M	12.81
Iowa *Wilson v. IBP, Inc.*, 558 N.W.2d 132 (Iowa 1996)						
$15 M	$100,000	25	Defamation, breach of fiduciary duty	Not discussed	$2 M	500
Maine *Harris v. Soley*, 756 A.2d 499 (Me. 2000)						
$1 M (4 plaintiffs)	Same	16.11	Intentional infliction of emotional distress, conversion	Not discussed	$1 M	16.11

Punitive Damages		Ratio	Nature of Conduct	Comparable Statutory Penalties	Final Punitives	Final Ratio
Verdict(s)	**After Tr. Court's Review**					
Maryland *Bowden v. Caldor, Inc.*, 710 A.2d 267 (Md. 1998)						
$9 M	$350,000	5.83	Malicious prosecution, defamation, false imprisonment	$1 M (maximum fine authorized by any Md. law)	Remittitur reversed, remanded for recon-sideration	N/A
Mississippi *Paracelsus Health Care Corp. v. Willard*, 754 So.2d 437 (Miss. 1999)						
$1.5 M $1.5 M	Same	42.73 150	Wrongful termination	Disregarded because no penalties found	$1.5 M $1.5 M	42.73 150
State Farm Mut. Auto. Ins. Co. v. Grimes, 722 So.2d 637 (Miss. 1998)						
$1.25 M	Same	657.89	Insurance bad faith	Not discussed	$1.25 M	657.89

Punitive Damages		Ratio	Nature of Conduct	Comparable Statutory Penalties	Final Punitives	Final Ratio
Verdict(s)	**After Tr. Court's Review**					
Missouri *Letz v. Turbomeca Engine Corp.*, 975 S.W.2d 155 (Mo. Ct. App. 1997)						
$67.5 M	Same	27	Wrongful death	Not discussed	$26.5 M	10.60
Barnett v. La Societe Anonyme Turbomeca Fr., 963 S.W.2d 639 (Mo. Ct. App. 1997)						
$175 M	$87.5 M	3.5	Wrongful death	Not discussed	$26.5 M	1.06
Nevada *Evans v. Dean Witter Reynolds, Inc.*, 5 P.3d 1043 (Nev. 2000)						
$6 M	Same	2.31	Conversion	Not discussed	$6 M	2.31
New Mexico *Allsup's Convenience Stores, Inc. v. N. River Ins. Co.*, 976 P.2d 1 (N.M. 1998)						
$4 M $500,000	$1 M $100,000	1.85 20.87	Insurance bad faith	Revocation of license	$4 M $500,000	7.41 104.34

Punitive Damages		Ratio	Nature of Conduct	Comparable Statutory Penalties	Final Punitives	Final Ratio
Verdict(s)	**After Tr. Court's Review**					
Ohio *Wightman v. Consol. Rail Corp.*, 715 N.E.2d 546 (Ohio 1999)						
$25 M	$15 M	6250	Wrongful death	Prosecution for manslaughter	$15 M	6250
Williams v. Aetna Fin. Co., 700 N.E.2d 859 (Ohio 1998)						
$1.5 M	Same	100	Fraud	Not discussed	$1.5 M	100
Oregon *Lakin v. Senco Prods., Inc.*, 987 P.2d 463 (Or. 1999)						
$4 M	Same	.65	Products liability (brain damage and paralysis)	Not discussed	$4 M	.65

Punitive Damages		Ratio	Nature of Conduct	Comparable Statutory Penalties	Final Punitives	Final Ratio
Verdict(s)	**After Tr. Court's Review**					
Jensen v. Medley, 11 P.3d 678 (Or. Ct. App. 2000)						
$1.25 M	Same	35.71	Retaliation against whistleblower	$1,000 and one year in prison	$175,000	5
MacCrone v. Edwards Ctr., Inc., 980 P.2d 1156 (Or. Ct. App. 1999) (en banc)						
$1.25 M	$1 M	3.64	Intentional infliction of emotional distress	$7,000 and 18 months in prison	$1.25 M	4.55
Axen v. Am. Home Prods. Corp., 974 P.2d 224 (Or. Ct. App. 1999)						
$20 M	Same	8.31	Products liability (blindness)	$60,000 and injunction against future sales	$20 M	8.31

Punitive Damages		Ratio	Nature of Conduct	Comparable Statutory Penalties	Final Punitives	Final Ratio
Verdict(s)	**After Tr. Court's Review**					
Parrott v. Carr Chevrolet, Inc., 965 P.2d 440 (Or. Ct. App. 1998)						
$1 M	$50,000	4.35	Unlawful trade practices	Injunction against unlawful practices	$300,000	26.10
South Carolina *Welch v. Epstein*, ___ S.E.2d ___ [2000 WL 1056052] (S.C. Ct. App. 2000)						
$3.9 M	Same	1.29	Medical malpractice (death)	Not discussed	$3.9 M	1.29
Hundley v. Rite Aid of S. C., Inc., 529 S.E.2d 45 (S.C. Ct. App. 2000)						
$10 M $1 M	Same	2 5	Pharmacist malpractice (brain damage)	$500 plus revocation of license	$10 M $1 M	2 5

Punitive Damages		Ratio	Nature of Conduct	Comparable Statutory Penalties	Final Punitives	Final Ratio
Verdict(s)	**After Tr. Court's Review**					
South Dakota *Grynberg v. Citation Oil & Gas Corp.*, 573 N.W.2d 493 (S.D. 1997)						
$4.8 M	Same	8.32	Fraud	$10,000 and 10 years in prison; disregarded because no charges sought	$1 M	1.73
Texas *Owens-Corning Fiberglas Corp. v. Malone*, 972 S.W.2d 35 (Tex. 1998)						
$4.35 M (4 plaintiffs)	$3.7 M	2.85 2.14 1.77 1.15	Products liability (asbestosis)	Disregarded because no penalties found	$3.7 M	2.85 2.14 1.77 1.15
N. Am. Refractory Co. v. Easter, 988 S.W.2d 904 (Tex. App. 1999)						
$1.5 M	$1.3 M	0.46	Products liability (asbestosis)	Disregarded because no penalties found	$1.3 M	0.46

Punitive Damages		Ratio	Nature of Conduct	Comparable Statutory Penalties	Final Punitives	Final Ratio
Verdict(s)	**After Tr. Court's Review**					
Harrison v. Querner, 2000 WL 4541 (Tex. App. 1999) (unreported)						
$1 M (2 plaintiffs)	Same	4.80	Fraud	Not discussed	$1 M	4.80
West Virginia *Vandevender v. Sheetz, Inc.*, 490 S.E.2d 678 (W. Va. 1997)						
$1.575 M $1.124 M	Same	5 15.59	Unlawful termination, retaliation	Disregarded because no penalties found	$1.109 M $1.124 M	5 15.59